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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 587. 16

SAMUEL R. TOUCEY, PETITIONER,

VS.

NEW YORK LIFE INSURANCE COMPANY,
A CORPORATION, RESPONDENT.

RESPONDENT'S SUPPLEMENTAL BRIEF.

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No. 587.

SAMUEL R. TOUCEY, PETITIONER,

VS.

NEW YORK LIFE INSURANCE COMPANY, A CORPORATION, RESPONDENT.

RESPONDENT'S SUPPLEMENTAL BRIEF.

In Respondent's Brief it is shown that one of the long established and well recognized grounds of injunctive relief by supplemental bill is to prevent the re-litigation in another court of issues finally settled by a decree in equity (Respondent's Brief, p. 17 *et seq.*). We also showed that the uniform decisions of this Court for at least the last fifty years have held

that Section 265 of the Judicial Code (Sec. 379, 28 U. S. C.; R. S., Sec. 720) does not prohibit the issuance of an injunction to prevent a party from re-litigating in a state court issues already adjudicated by a federal equity court (Respondent's Brief, page 21 *et seq.*). We pointed out that the present is such a case and, therefore, that if the uniform prior decisions of this Court are still the law the ruling of the Eighth Circuit in this case (102 Fed. 2d 16 and 112 Fed. 2d 927) must be affirmed.

This Court has, however, granted certiorari in several cases bearing no similarity on the facts to this case and having the single common characteristic that lower federal courts had enjoined the parties for various reasons from proceeding in state courts. At least three of these cases were decided by this Court by four to four votes and have been set down for argument on the opening day of the October term. The remaining case (of which we know) is still pending here on petition for certiorari. It is therefore evident that this Court is primarily interested in a question of judicial policy rather than in the justice or injustice of the ruling in any particular case. We can only guess the sources of this new interest in a subject on which the law, both federal and state, as well as the law of England and its dominions, has long been settled. We believe that some members of this Court doubt the wisdom of permitting the federal courts to enjoin parties from proceeding in state courts under any circumstances and therefore wish to review the purpose and scope of Section 265 with the object of changing its present interpretation.

We shall, therefore, assume for the purpose of this supplemental brief that the question for review is this: *Is a federal injunction against proceedings in a state court such an unwarranted interference with the processes of that court, leading to such conflict and dissonance that Section 265 of the Judicial Code should be invoked to abolish it under all circumstances.* Such injunctions at the

present time issue only under exceptional circumstances (Respondent's Brief, p. 35). The question is whether the *exceptions* should be abolished.

It is demonstrated in Respondent's Brief that upon principle and authority, including many decisions of this Court, the injunction issued by the district court in this case was a lawful and proper exercise of its equity powers, not an unseemly interference with the state court's jurisdiction. To have withheld the injunction here might have resulted in a state court judgment directly contrary to the equity decree and, hence, an undesirable conflict between the rulings of the two courts, the thing Section 265 of the Judicial Code was designed to prevent. So this court and the inferior courts have held.

It occurred to us that in this brief it might be helpful to the Court to broaden the field of inquiry to ascertain what the state courts, including the Missouri courts, would have done were the positions of the two tribunals reversed, or were the respective actions pending in two state courts. Whether a state court would have enjoined proceedings in the Federal Court if the positions of the two courts were reversed, and whether one State court would have enjoined another state court were both actions pending in state courts, has an important bearing on the construction to be given Section 265. If injunctions are issued by the state courts against proceedings in Federal courts, and against proceedings in other state courts under the same circumstances under which Federal injunctions against state court proceedings have heretofore been sanctioned, it would seem reasonable to construe Section 265 to preserve the same powers to the Federal courts in order to protect the co-ordinate jurisdiction of the Federal courts and to prevent their being deprived of a power which all other similar courts possess in those instances heretofore recognized by this Court as exceptions to the literal language of Section 265.

SUMMARY OF THE ARGUMENT.

The principle of law that a court of equity will enjoin the parties or those in privity with them from relitigating in the courts of other jurisdictions a question already settled by final decree is not confined to the federal courts but is of universal application. The state courts have invoked it to enjoin actions pending in federal courts, to enjoin actions pending in other state courts, and to enjoin actions pending in other courts within the state. Likewise, the federal courts have invoked it to enjoin parties from proceeding in other federal courts. It is the law of England.

This court's present construction of Section 265 of the Judicial Code (Sec. 379, 28 U. S. C.; R. S., Sec. 720) which recognizes the case at bar as an exception to the prohibition of the statute has merely enabled the federal courts to rule in harmony with all other courts possessing coordinate jurisdiction in our system of jurisprudence. To repudiate this principle or withhold its application in this case would seriously impair the power of the federal court, and would be contrary, not merely to a long line of decisions by this court and the lesser federal courts, but to a rule of universal application in all courts throughout the United States and the English speaking world.

ARGUMENT.

STATE COURTS ENJOIN PARTIES FROM PROSECUTING ACTIONS IN THE FEDERAL COURTS ON SUBSTANTIALLY THE SAME GROUNDS ON WHICH THE FEDERAL COURTS ENJOIN PROCEEDINGS IN STATE COURTS.

If the position of the federal and the state courts in the case at bar were reversed the Missouri Supreme Court would have directed that the prosecution of the federal action be enjoined.

In *Wonderly* v. *Lafayette County*, 150 Mo. 635, 51 S. W. 745, 73 Am. St. Rep. 474, 45 L. R. A. 386 (1899), the plaintiff's assignor, a resident of Illinois, had judgment in the Federal Court for the Western District of Missouri against the defendant on certain bonds issued by the county. Afterward this judgment was assigned to the plaintiff, a resident of Missouri, who sued the defendant in the Circuit Court of Lafayette County. The county set up as a defense that the judgment in the Federal Court was procured by fraud for the following reasons: The state courts, in other litigation, had previously held the issue of which these bonds were a part invalid. The Federal Court, in other litigation, had previously held them valid. The real owner of the bonds, a citizen of Missouri, caused the original action to be brought in the Federal Court by the resident of Illinois alleging that he was the owner of the bonds in order to secure the benefits of federal jurisdiction. Having procured the Federal judgment, and the term having gone by so that it could not be set aside, the Illinois resident assigned the judgment to the resident of Missouri in order that he might enforce it in the state court and in order that the suit on the judgment might not be removed to the federal court. The answer asked that

the judgment in the Federal Court be set aside and that the plaintiff be enjoined against the prosecution of a writ of *scire facias* sued out in the Federal Court. On plaintiff's motion the trial court struck out all of this portion of the answer and, judgment going for the plaintiff, the Missouri Supreme Court on appeal held that the answer stated a good defense to the action on the judgment and a good ground for equitable relief. After reviewing the authorities in other jurisdictions, the court said, l. c. 749:

> The law which required the owner of the bonds to be a citizen of another state, in order to give the federal court jurisdiction, was a law of that court, and the plaintiff's act of masking as Owings, and thus gaining entrance, which, with his own face, he could not have gained, was a fraud on that law; and since, by that means, he evaded the law of this state applicable to his cause of action, as pronounced by this court, his judgment is to be deemed as in fraud of the law of this state, and not entitled to the protection of its courts. Freem., Judgm., Sec. 566; *Dunlap* v. *Cody*, 31 Iowa 260; *Duringer* v. *Moschino*, 93 Ind 495.

and after discussing the authorities further said, l. c. 750:

> We quote the words of these high courts and distinguished jurists to show in what estimation they hold the conduct of those who, by cunning, would pervert the administration of justice. There is no difference, in principle, between the fraudulent concoction of a scheme that brings the defendant within the jurisdiction of a court of a foreign state and the fraudulent concoction of a scheme that brings him within the jurisdiction of the federal court, which otherwise would not have had jurisdiction over him. In whatever aspect we view it, we cannot fail to see that the judgment in question was obtained by a fraudulent abuse of the court which rendered it, and a fraudulent scheme by which the defendant was tricked out of the defense it had a right to make, and could have made in the only forum in which the real plaintiff could have sued.

and further said, l. c. 750:

> *A suit in equity to set aside a judgment in no sense assails the court in which the judgment was rendered.* It is simply a proceeding *in personam*, and the decree adjudges the rights of the parties *inter sese* in relation to that judgment. Story, Eq. Jur., Sec. 875; Black, Judgm., Sec. 919; *Pearce* v. *Olney*, 20 Conn. 544; *Marshall* v. *Holmes*, 141 U. S. 589, 12 Sup. Ct. 62. A judgment of a United States circuit court sitting in this state is to be accorded such effect, and such effect only, as a judgment of a circuit court of this state. Black, Judgm., Sec. 938; *Crescent City Live-Stock Co.* v. *Butchers' Union Slaughter-House Co.*, 120 U. S. 141, 7 Sup. Ct. 472. The federal circuit courts have never claimed for themselves higher authority than the highest courts of original jurisdiction of the state in which they sit, and the lofty spirit in which those courts administer justice repels the idea that they would claim that a judgment of theirs, procured by fraud and abuse of their jurisdiction should be held exempt from a direct attack in the only forum in which the injured party could obtain relief (italics ours).

The Court expressly pointed out that the judgment of the Federal Court had become final with the passing of the term and, therefore, could not be set aside by the Federal Court "and, the defendant being a citizen of Missouri could bring no independent suit in equity in that tribunal." The court said that the writ of *scire facias* had doubtless "taken its course" pending the appeal and that, therefore, a writ of injunction would, doubtless, be without effect.

The similarity *in substance* between that case and this is striking. Here Toucey was defeated in his original action and a decree dismissing his bill on the merits duly entered (R. 43). No appeal was taken. Thereupon on December 28, 1937 (R. 22), more than a year after the dismissal of the original equity action, one James Shay, a citizen of the District of Columbia, brought suit against respondent in the Circuit Court of Jackson County, Mis-

souri (R. 53), alleging that he was the assignee of Toucey's cause of action. The assignment is shown at R. 62. It is attached to a stipulation (R. 60) respecting the testimony of James Shay which states, in effect, that Shay had known one of Toucey's attorneys for six or seven years; that he had never met Toucey; that he was requested by Toucey's attorney to accept an assignment of the cause of action; that he never knew anything about the nature of the claim except what the attorney told him; that he expected to account to Toucey for the proceeds collected; that he gave Toucey nothing of value for the assignment. Shay further states in the stipulation (R. 61):

> I accepted the assignment of the cause of action as an accommodation to Mr. M. W. Borders, Jr., it being my understanding that the legal title to the cause of action being in my name and the suit being in my name, and my being a resident of the District of Columbia, there would be no diversity of citizenship as between me and the New York Life Insurance Company within the meaning of the statutes relating to the removal of causes of action.

The purported assignment from Toucey to Shay was therefore a mere fraudulent device for the purpose of enabling Toucey, through Shay, to relitigate in the state court the same issues adjudged by the decree in equity in the Federal Court and to forestall any action by the Federal court by preventing the defendant from removing the case. It could not remove a suit brought by a citizen of the District of Columbia.

The Court will observe that Shay's action was merely a suit at law on the policy for disability benefits claimed to be due Toucey, alleging (R. 54) that Toucey had paid all the premiums due and that the policy was in full force and effect and that Toucey had performed all of its terms and conditions, entirely contrary to the allegations of Toucey's original petition (R. 26 *et seq.*) and to the findings of the learned trial judge (R. 44 *et seq.*). As the Circuit Court of Appeals said (102 Fed. 2d l. c. 20):

> After that final adjudication has been made and decree entered, a law case for recovery of disability benefits has been ingeniously made out on the face of a petition in the state court by simply omitting the facts as they were established between the parties in the federal equity suit. The pleader has omitted to show that Mr. Toucey made application to the insurance company for reduction of his policy and that pursuant to that application the alteration and reduction of the policy as to premiums and benefits was made and that he had recognized the change in the contract by making a payment of premium at the reduced premium rate.

And further said, l. c. 20:

> Mr. Toucey can not by mere concealment or change of form of procedure obtain an effective adjudication contrary to the adjudication in the federal court. Both his claims to life insurance and to disability benefits under the policy have been settled against him.

If it was wrong for Wonderly to shift his cause of action back and forth between a citizen of Missouri and a citizen of Illinois to secure adjudications by courts he thought were favorable to him, thus arousing the manifest indignation of the Missouri Supreme Court, why is it not wrong for Toucey to do so? If it is wrong for Toucey to do so why should not the Court to which he first resorted stop him from doing so? It is a court of equity. It cannot be that this Court is less inclined to discourage the injustice to a litigant which would result from such an ingenious but wrongful device than are the courts of the various states.

Reagan v. *Dick*, 233 Pac. 159 (Colo., 1925), presents the identical situation here except that the original action was brought in the Colorado state court and the subsequent action in the federal court. An equity suit was begun and proceeded to final decree. Afterward the losing party began an action in the Federal Court for the

District of Colorado to re-litigate the same question, which subsequently was appealed to the Circuit Court of Appeals where it was pending. A decree was then obtained from the Colorado state court enjoining the further prosecution of the federal action. It was affirmed on appeal. The Supreme Court said, l. c. 160:

> That the court, federal or state, which first begins the exercise of its jurisdiction, holds it, is clear (15 C. J. 1176), and it follows, of course, that such a proceeding cannot be enjoined or prevented by enjoining the parties. It has been held, however, that, when the jurisdiction of a United States court has first attached, it may enjoin the parties from proceeding in a state court concerning "the identical controversies therein pending," and we see no answer to the proposition that the state court in a converse case may do the same. It has actually been done. *Home Ins. Co.* v. *Howell*, 24 N. J. Eq. 238, cited with approval in *Moran* v. *Sturges*, 154 U. S. 256, 14 S. Ct. 1019, 38 L. Ed. 981.

The Court further said, l. c. 160:

> The complaint in the present action alleges that there was a former action between the parties, see 74 Colo. 293, 294, 220 Pac. 990, wherein the present plaintiffs were defendants, in which they were granted an injunction against interference with their possession and use of certain mining property, and that the proceedings in the United States court were begun for the purpose of retrying the issues tried in that former suit, which would be unlawful. *Riverdale Mills* v. *Mfg. Co.*, 198 U. S. 188, 25 S. Ct. 629, 49 L. Ed. 1008. The lower court found this to be true, and we cannot review that finding. It follows that, upon the record before us, the procedure in the federal court is not the first but the second exercise of jurisdiction over litigation, not only begun, but already in judgment in the state court, and the injunction in the present case is not void.

While the original state court action in *Reagan* v. *Dick* was *in rem* involving the rights of the parties to a mining property, the issuance of the injunction enjoin-

ing the parties from proceeding in the federal court is not placed on any such ground but on the ground of the previous adjudication by the Colorado court.

In *Moebius* v. *McCracken*, 261 Mich. 409, 246 N. W. 163 (1932), a minor by next friend sued at law for personal injuries in an Ohio court from which the action was removed to the federal court for that district. On a compromise the federal court entered judgment for the plaintiff for an agreed sum. Six years later, being then of age, she brought two suits in the Michigan state court, one at law for damages for the injuries and the other in equity asking that the judgment of the federal court in Ohio be declared a nullity and that the defendant be enjoined from setting up the Ohio judgment as a bar to her suit at law. The grounds of the bill were that the compensation adjudged in the federal court was inadequate for the injuries, that the federal court in arriving at the amount of the judgment considered only the compromise agreement and did not review the merits of the claim and that she had suffered great pain, expense and disability since. She alleged that the defendant could not be served in the State of Ohio and that the judgment in the Ohio federal court could not be vacated because the term had long passed. On appeal from an order below dismissing the bill the court held that it stated a good cause of action, saying, l. c. 167:

> While we will not refuse recognition to a foreign judgment regularly entered, nor, as a rule will we set aside such a judgment in an independent equity proceeding, by exercising chancery power over the parties, nevertheless, when it appears from the face of the judgment itself that it was entered in accordance with a compromise settlement, as a mere formality designed to lend strength to the agreement affecting minors' rights and without the benefit of testimony or a judicial examination of the merits of the case or the fairness of the compromise, a court of equity, in performance of its duty to protect the interests of minors, should give relief. To deny plain-

> tiff the right to bring the suit may result in depriving her of any remedy at law for what may be a flagrant fraud practiced on her.

The Court cites and relies on *Wonderly* v. *Lafayette County, supra.*

In *Prudential* v. *Merritt-Chapman & Scott Corp.*, 163 Atl. 694 (N. J. Chancery, 1932), the controversy arose upon the death of one Baker on whose life insurance aggregating $1,000,000 had been written by various companies. The beneficiary sued on the policies, on one in the Federal Court for the District of New Jersey, on one in the New Jersey Supreme Court and on the others in the New York Supreme Court. The companies filed suits for the cancellation of the policies in the New Jersey Chancery Court on the ground that the issuance of the policies had been procured by the fraud of Baker and asked that the beneficiary be enjoined from prosecuting the law actions pending the determination of the issues in the equity suits. The Court held that the companies were entitled to the injunctions because in point of time the equity suits had been "first commenced" and that the right of the companies to set up their equitable defenses in the law actions was not "an adequate remedy" such as to entitle the law actions to have priority. The Vice Chancellor considered the authorities carefully. The principle upon which the Court proceeded is stated as follows, l. c. 895, 896:

> That this court has power to enjoin one subject to its jurisdiction from the prosecution of an action at law pending the determination of the validity of the instrument upon which such law action is based and alleged to be void for fraud is elementary; and this, also, whether such action is pending in the law courts of this or of a foreign jurisdiction, and irrespective of precedence of time between this and the law courts, providing the remedy here is more complete and adequate than at law. *Home Insurance Company* v. *Howell*, 24 N. J. Eq. 238; *New Jersey*

> *Zinc Company* v. *Franklin Iron Company*, 29 N. J. Eq. 422; *Margarum* v. *Moon*, 63 N. J. Eq. 586, 53 Atl. 179; *Bigelow* v. *Old Dominion Copper Mining & Smelting Company*, 74 N. J. Eq. 457, 71 Atl. 153; *Lehigh Valley Railroad Company* v. *Andrus*, 91 N. J. Eq. 225, 109 Atl. 746; *Caruso* v. *Caruso*, 103 N. J. Eq. 487, 143 Atl. 771. * * * The principle lying at the foundation of this rule was early recognized and applied in England by Lord Ellenborough, just after the close of the eighteenth century, in *Payne* v. *Drew*, 4 East 523, cited in the *United States ex rel. Riggs* v. *Board of Supervisors of Johnson County*, 72 U. S. (6 Wall.) 196, 18 L. Ed. 768, 776, and also in *Taylor* v. *Carryl*, 61 U. S. (20 How.) 583, 617, 15 L. Ed. 1028, 1032.

Keith v. *Alger*, 114 Tenn. 1, 85 S. W. 71 (1905), holds that a state court can and will enjoin the enforcement of the decree or judgment of a federal court where it is shown that it was procured by fraud extrinsic to the questions examined and determined in the action, saying, l. c. 76:

> There is no doubt, as we think, that a state court may entertain a bill to restrain the enforcement of a decree or judgment of a federal court on the ground that the latter was procured by fraud. This is an independent right of action that does not involve a retrial of the issues disposed of in such former cause. It has been held that the federal courts may entertain such a cause of action against a judgment of a state court. The reasons and the authorities on which they are based are fully considered in the case of *Marshall* v. *Holmes*, 141 U. S. 589, 12 Sup. Ct. 62, 35 L. Ed. 870; likewise in the case of *National Surety Company* v. *State Bank*, 56 C. C. A. 657, 120 Fed. 593, 61 L. R. A. 394. The same reasons control an application in a state court to restrain the enforcement of a decree or judgment rendered by a federal court.

There, however, the fraud submitted to the Tennessee Court had already been submitted to and ruled on by the federal court in a proceeding by supplemental bill

and the state court therefore held that since the express issue raised had been ruled by the federal court, its ruling was *res judicata* and the state court bill should be dismissed. The original suit in the federal court had been to set aside a conveyance of real estate for the vendor's fraud and to require the return of the vendee's money. The equity suit in the state court was on the ground that the vendee had acquiesced in the transaction by, subsequently, with knowledge of the facts, making conveyance of the property to another for a valuable consideration.

Mock v. *Kennedy*, 11 La. Annual 525, 66 Am. Dec. 203 (1856). The plaintiff brought a suit the object of which was to secure a separation of her property from that of her husband after his insolvency and suit by creditors. Judgment had been secured against the husband in the federal court to which the wife was not a party, from which a writ of execution had issued to the marshal to seize the husband's property. The Court held that an injunction was properly issued below against the marshal to abstain from the commission of a trespass by executing the writ against property adjudged in the state court action to be the separate property of the wife.

In *Howard* v. *Cannon*, 11 Richardson's Eq. 23, 75 Am. Dec. 736 (S. Car., 1859), Cannon assigned to Howard as trustee for the benefit of Cannon's creditors. Then others recovered a large money judgment against Cannon in the Federal Court for South Carolina and the marshal was proceeding to seize and sell certain slaves which Cannon had assigned to Howard. The court held that the Commissioner below was right in enjoining the creditors from seizing and selling the assigned property pursuant to the Federal Court judgment, saying, l. c. 738:

> The second ground of appeal assails the reasoning expressed in the pleas, that the subject of controversy was within the exclusive jurisdiction of the circuit court of the United States, which rendered

the judgment of *Cummings & Styron* v. *Cannon*. We have every disposition to avoid even the appearance of a conflict with the tribunals of the United States created under the constitution, and we have no disposition to quibble between restraining processes and restraining persons from proceeding under them. But surely there is a substantial difference between undertaking to revise the judgment and procedure of a co-ordinate or even superior tribunal, and interfering to restrain parties from acts not authorized by our equals or superiors. It does not impugn in any respect the judgment of the federal tribunal, that we interpose to prevent parties under our control from abusing the process of that court. It has granted a judgment against Cannon, and we make no offer to restrain the execution of their judgment from the estate of Cannon. But we do not perceive that, under a judgment against Cannon, the estate of Howard or any other person can be legitimately seized and sold. The judgment of Cummings & Styron is left intact, and we simply determine that they or their agent had no authority to seize the property of a stranger under pretense of its operation. To determine otherwise would be to adjudge that a plaintiff in execution against a pauper might obtain satisfaction from any rich inhabitant of the state.

Ingraham v. *National Salt Co.*, 139 Fed. 684 (E. D. N. Y., 1905), Aff. 143 Fed. 805 (1906). There a suit by attachment against real estate was begun in the federal court in New York. Later a receivership action was begun in the state court and the receivers sold the attached property. Afterward judgment was recovered in the federal court but the state court enjoined the marshal from making sale of the attached property. The federal court held that it would not enjoin the receivers from prosecuting their injunction suit because, the mere issuance of a writ of attachment not amounting to possession, the receivers had the prior actual custody of the real estate involved and, therefore, the prior right of disposition.

In *Twaits* v. *Penn. R. Co.*, 77 N. J. Eq. 103, 75 Atl. 1010 (1910), plaintiff sued for personal injuries in New

Jersey and the case was removed to the federal court where the defendant set up a release as a defense. Plaintiff then filed a second suit, this time in equity in the state court to enjoin the defendant from asserting the release as a defense on the ground that under the circumstances set forth in the bill it would be unfair and inequitable for the defendant to set up the release. The defendant contended that the New Jersey Chancery Court was without jurisdiction because that of the federal court was exclusive. In denying this contention and in upholding the jurisdiction of the state court in equity the court said, l. c. 1012-13:

> Since the gravamen of this bill is that the railroad company, the defendant in the lawsuit pending in the other jurisdiction, is setting up as a defense a receipt claimed to operate as a release, which, under the circumstances alleged in the bill, it is charged it is inequitable for it to do, I find that there is no principle of comity or public policy which forbids this court from passing upon the equitable claims of the complainant, and exercising whatever of its jurisdiction it finds proper under the circumstances. My opinion is that this would be so even if the action at law were pending in one of the courts of a sister state; therefore, *a fortiori*, would it be true where the suit at law was pending in New Jersey and was removed by the defendant to the federal court, where, I assume, it could also have removed this equitable action had it seen fit to do so? The jurisdiction at law is not interfered with by this equitable action. Whatever jurisdiction the Circuit Court of the United States has power to exercise with respect to the action at law is left unimpaired, and is not taken over into this court in this action in any way. The sole thing sought by the complainant here is equitable jurisdiction over the defendant to prevent it from inequitable conduct. I entirely agree with the expression of the learned Chancellor as above expressed that there is no doubt or difficulty about the right of the exercise of the power of equity of its jurisdiction under such circumstances.

It therefore becomes necessary to investigate the equitable claims of the complainant for the purpose of seeing whether they are well grounded.

See also:

In re Dawley, 99 Vt. 306, 131 Atl. 847 (1926).

Marchant v. *Wannamaker*, 176 S. Car. 369, 180 S. E. 350 (1935).

The Home Insurance Co. v. *Howell*, 24 N. J. Eq. 238.

Akerly v. *Bilas*, 15 Wis. 401.

Brown v. *Trent*, 35 Okla. 164, 128 Pac. 895 (1912).

Fowler v. *Westerhoff Bros. Co.*, 104 Atl. 198 (1918) (N. J. Chancery).

Chicago, R. I. & P. Ry. Co. v. *Callicotte*, (8 Cir.) 267 Fed. 799 (1920).

Many additional cases could be cited. The foregoing, however, clearly show that the state courts do not hesitate to enjoin the parties from proceeding in the federal courts or to enjoin the officers of those courts where the litigant does not have an equitable remedy in the federal court or where the federal remedy is not adequate. The circumstances under which such injunctions issue from the state courts are comparable to those under which they issue from the federal courts.

It may be that in earlier times some doubt was entertained respecting the right of state courts to enjoin parties from proceeding in Federal courts. If so that doubt has long since been resolved in favor of the right, on which this court recently placed it stamp of approval in *Princess Lida* v. *Thompson et al., Trustee*, 305 U. S. 465 (1938). There the trustees under a trust filed an account in the Common Pleas Court of Fayette County, Pennsylvania, which, in the absence of exceptions, was confirmed. Five years later a second partial account was filed in the same court by the two surviving trustees. On the following day two of the beneficiaries brought suit in equity

against the two surviving trustees and the administrators of the deceased trustee in the District Court for the Western District of Pennsylvania alleging mismanagement of the trust, praying that the trustees be removed and that the defendants account for and repay the losses of the trust. The trustees moved to dismiss the bill in the federal court for lack of indispensable parties and because the state court had exclusive jurisdiction. The federal court over-ruled the motion and ordered the defendants to answer, reserving the question of jurisdiction. Upon the petition of the trustees the state court enjoined the beneficiaries from prosecuting the action in the federal court and this was affirmed by the Pennsylvania Supreme Court. Meanwhile the federal court had enjoined the trustees from further prosecuting the injunction proceedings in the state court and proceeded to try the case. On certiorari to the Supreme Court of Pennsylvania this court held that the Pennsylvania Court acquired a prior jurisdiction in equity by virtue of the filing of the accounts and was in a position enabling it to give complete relief and, therefore, the District Court for the Western District of Pennsylvania was without jurisdiction of the subsequent equity suit brought to secure the same relief which the state court was already in a position to afford, and could and should be enjoined. This court said, l. c. 465-466:

> Certain it is, therefore, that if both courts were to proceed they would be required to cover the same ground. This of itself is not conclusive of the question of the District Court's jurisdiction, for it is settled that where the judgment sought is strictly *in personam*, both the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation at least until judgment is obtained in one of them which may be set up as *res judicata* in the other. On the other hand, if the two suits are *in rem*, or *quasi in rem*, so that the court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought the

> jurisdiction of the one court must yield to that of the other. We have said that the principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other, is not restricted to cases where property has been actually seized under judicial process before a second suit is instituted, but applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property. The doctrine is necessary to the harmonious cooperation of federal and state tribunals.

And further said, l. c. 467:

> The Common Pleas Court could not effectively exercise the jurisdiction vested in it, without a substantial measure of control of the trust funds. Its proceedings are, as the court below held, *quasi in rem*, and the jurisdiction acquired upon the filing of the trustees' account is exclusive. The District Court for the Western District of Pennsylvania is without jurisdiction of the suit subsequently brought for the same relief, and the petitioners were properly enjoined from further proceedings in that court.

It would of course be wrong to say that the courts of the state and nation have the unrestricted right each to enjoin parties from proceeding in the other. It would be equally wrong and equally unreasonable to say that they cannot do so under any circumstances. There is a well recognized intermediate ground in which either may, as the law now stands, properly do so. It will not promote the ends of justice to so far impair the power of the national courts to administer equity as to say that while under proper circumstances the state courts may enjoin parties from proceeding in them, they, on the contrary, cannot in any event restrain parties from proceeding in state tribunals. Especially is this true where as we have shown in respondent's original brief this Court has repeatedly said that Congress entertained no such intention in enacting Section 265 of the Judicial Code.

STATE COURTS ENJOIN PARTIES FROM PROCEEDING IN OTHER STATE COURTS UNDER CIRCUMSTANCES SIMILAR OR COMPARABLE TO THE FACTS OF THE PRESENT CASE.

State courts readily enjoin their citizens from prosecuting actions in the courts of sister states where sufficient grounds are shown for the interposition of a court of equity as where the party seeking the injunction will be subjected to fraud or oppression, where the purpose of the foreign suit is to secure some unfair advantage under the law or the facts or where, as here, one of the parties is attempting to re-litigate in another jurisdiction issues already settled in equity by the enjoining court. See, 32 C. J., Sec. 137, pp. 115 *et seq.* Great numbers of cases have applied this principle.

In *O'Haire* v. *Burns*, 45 Colo. 432, 101 Pac. 755, 131 Am. St. Rep. 191, 25 L. R. A. (N. S.) 267 (1909), O'Haire had originally sued Burns and others in equity asking that he be decreed the owner of a one sixth interest in certain mining properties pursuant to the terms of what appears to have been a "grub stake" contract. Burns prevailed and O'Haire was adjudged to have no interest, the decree being affirmed by the Colorado Supreme Court. Afterward while Burns was in Iowa on business O'Haire sued him there at law for $300,000 damages. Burns then brought a second equity suit in Colorado setting up the facts and alleging that O'Haire sought in the Iowa suit to relitigate issues previously disposed of by the Colorado court and asked that O'Haire be enjoined from prosecuting the Iowa suit. A demurrer to the complaint was over-ruled and the defendant elected to stand on it. A final decree was entered below and the preliminary injunction made permanent. On appeal the Colorado Supreme Court affirmed the decree below and said, 101 Pac. l. c. 757-8:

> We have no doubt but that Mr. Burns could have pleaded in the Iowa action the former litigation in this state and the result thereof as a complete de-

fense, and, if established by proper evidence, it would have received the full faith and credit by the Iowa court to which it is entitled under the Constitution of the United States, but why compel him to go over 500 miles to a foreign jurisdiction from that in which both parties reside, or from where the original cause of action, if any, accrued, from where the property over which the original contention arose was situate, and from where all the witnesses reside, in order to present these facts to a foreign tribunal? We have been furnished with no principle of law or equity nor process of sound reasoning why this should be done and are of the opinion none can be presented. Besides, if O'Haire is allowed to continue his Iowa suit, and is defeated, under this same rule he could, if aided by persons with means, bring another action in some other state wherever perchance he might secure personal service upon Mr. Burns and thus compel him to again defend the same action with at least the plea and proof of *res judicata* and so continue without any redress. The fallacy of the statement is itself an answer to it. This method of equitable relief appears to have been approved by the great weight of authorities, and, for answer to the able argument of counsel against it, we refer to the reasons assigned in support thereof in the following cases: *Cole* v. *Cunningham*, 133 U. S. 107, 10 Sup. Ct. 269, 33 L. Ed. 538; *Cunningham* v. *Butler*, 142 Mass. 47, 6 N. E. 782, 56 Am. Rep. 657; *Butler* v. *Goreley*, 146 U. S. 313, 13 Sup. Ct. 84, 36 L. Ed. 981; *Pickett* v. *Ferguson et al.*, 45 Ark. 177, 55 Am. Rep. 545; *Engel* v. *Scheuerman*, 40 Ga. 206, 2 Am. Rep. 573; *Dehon et al.* v. *Foster et al.*, 4 Allen (Mass.) 545; *Hawkins* v. *Ireland*, 64 Minn. 339, 67 N. W. 73, 58 Am. St. Rep. 534; *Field* v. *Holbrook*, 33 Abb. Prac. (N. Y.) 377; *Kittle* v. *Kittle*, 8 C. P. Rep. (N. Y.) 72; *Vermont & Canada R. R. Co.* v. *Vermont Cen. R. R. Co. et al.*, 46 Vt. 792; *Gage* v. *Riverside Trust Co.*, (C. C.) 86 Fed. 984; *Kempson* v. *Kempson*, 63 N. J. Eq. 783, 52 Atl. 360, 625, 58 L. R. A. 484, 92 Am. St. Rep. 682; *Haze & Quimby* v. *Lyndonville Nat. Bank et al.*, 70 Vt. 543, 41 Atl. 1046, 67 Am. St. Rep. 680; *Kendall* v. *Coke Co.*, 182 Pa. 1, 37 Atl. 823, 61 Am. St. Rep. 688; *Hager* v. *Adams*, 70 Iowa 746, 30 N. W. 36; *Dinsmore* v. *Neresheimer*, 32 Hun. 204.

Except for the matter of geographical distance between Colorado and Iowa we do not believe that the case at bar can be distinguished from *O'Haire* v. *Burns*. We do not believe that distance was the determinative element in that case. As the Court says, *res judicata* could be pleaded but that would not prevent the bringing of still another suit and another and another. Here, if Toucey through Shay can maintain his suit at law in Missouri, why can he not maintain it in any other state, and again and again? If distance is the test, what is a reasonable distance? No case we know of holds that distance is the test.

For a very similar case and the same ruling see *Life Insurance Co.* v. *Fisher*, 5 Tenn. Civ. App. 232 (1915) (Affirmed without opinion by Tenn. Sup. Ct., 1915). The only difference between that case and *O'Haire* v. *Burns*, *supra*, is that in *Life Insurance Co.* v. *Fisher* the original action in Tennessee appears to have been at law to collect the proceeds of a policy as was the subsequent action filed by the same plaintiff in Mississippi. The Tennessee court enjoined Fisher from prosecuting the suit in Mississippi after he had been defeated in Tennessee and upon his proceeding to do so punished him for a contempt. The appellate Court affirmed this action below.

The rule is stated in 32 C. J. 117, as follows:

> Where a controversy between residents has been determined by the courts of the state, and, while one of the parties is temporarily in a sister state, an action is commenced against him there by the adverse party, involving matters previously determined, an injunction will be granted restraining the adverse party from prosecuting the suit in the sister state.

The same essential principle is applied to different facts in *State ex rel. N. Y., C. & St. L. R. Co.* v. *Norton*, 321 Mo. 764 (*en banc*), 55 S. W. 2d 272 (1932). A citizen of Indiana, the administratrix of her deceased husband's estate,

sued the railroad in Missouri under the Federal Employers' Liability Act for damages for his death which occurred in Indiana. The railroad secured an injunction in Indiana against the prosecution of the Missouri suit notwithstanding which she pressed it to judgment. The railroad then moved the Indiana court to issue a citation for contempt against her which was done. Thereupon the Missouri circuit court enjoined the railroad from prosecuting the citation and the latter petitioned the Missouri Supreme Court for a writ of prohibition prohibiting the circuit court from entertaining jurisdiction of the injunction proceeding against it. The court made absolute the provisional rule in prohibition theretofore issued saying, l. c. 273:

> It is settled law that, in a proper case, a court of equity having jurisdiction of the person may enjoin such person from prosecuting a suit in a foreign jurisdiction. By a "proper case" we mean that the party seeking such an injunction must make a clear showing that it would be *inequitable, unfair and unjust to permit the prosecution of the suit in a foreign jurisdiction* (italics ours).

And further said, l. c. 274:

> The Indiana court had jurisdiction to enjoin Lena C. Meek, administratrix, from prosecuting her suit in the St. Louis circuit court, and to adjudge her in contempt for proceeding with the prosecution of that suit in violation of the injunction. If, as we have held, the decree of the Indiana court enjoining the prosecution of the suit in the St. Louis circuit court was a valid decree, the railroad company, being an interested party, was entitled to institute any lawful proceeding looking to the enforcement of that decree. * * * The contempt proceedings were instituted by the railroad company. When these proceedings were instituted, the jurisdiction of the court, as well as the right of the railroad company to prosecute the proceedings to a termination, at once attached. It is familiar law that, where the jurisdiction of a court and the right of a party to prosecute the proceedings

therein have once attached, that right cannot be arrested or taken away by proceedings in another court. *Stevens* v. *Central National Bank of Boston*, 144 N. Y. 50, 39 N. E. 68. For this reason the St. Louis circuit court did not have jurisdiction to enjoin the railroad company from prosecuting the contempt proceedings in the Indiana court.

It is significant, and a review of the cases will show, that it is typical of the attitude of the state appellate courts that the Missouri Supreme Court did not countenance the attempt of the St. Louis Circuit Court to create a stalemate in the litigation by enjoining the railroad from prosecuting the contempt action. The exercise of the power of injunction in this field has not produced the discord or the conflict between courts or the stalemate in litigation which some members of this court may have been led to fear. The reason is that such injunctions issue only in exceptional cases and then only in accordance with well defined and well recognized principles of law, so that as far as can be judged from reading the reports, the courts in which the parties have upon established principles been enjoined from proceeding, do not take the attitude that their powers have been interfered with by the enjoining courts. Federal courts have been as careful in this respect as have the state courts. The cases lend no support to the theory that the established exceptions to the application of Section 265 of the Judicial Code lead to conflict between the courts of the states and nation.

The subsequent history of *State ex rel. N. Y., C. & St. L. R. Co.* v. *Nortoni, supra*, is interesting and sheds further light upon this subject. After the Missouri Supreme Court had prevented the lower court from interfering with the prosecution by the railroad of the contempt proceedings against the plaintiff below whose name was Meek, her Missouri attorneys had one Maude J. Hamilton, an employee in their office, appointed ancillary adminis-

tratrix in Missouri of the estate of the deceased. Mrs. Meek, the Indiana administratrix, dismissed her Missouri action and Maude J. Hamilton as Missouri administratrix brought a new action against the railroad in Missouri. The railroad then brought an injunction suit against various attorneys, a notary public and certain witnesses to prevent the taking of testimony in Indiana in the Hamilton suit. In *New York, C. & St. L. R. Co.* v. *Perdue*, 97 Ind. App. 517, 187 N. E. 349 (1933), the appellate Court of Indiana, *en banc*, reversed the order of the lower court which refused to issue the injunction and directed that it issue, saying, l. c. 351:

> We are not unmindful of the rule that, on grounds of comity, the power of one state to interfere with a litigant who is in due course pursuing his rights and remedies given under the law, in the courts of another state, should be exercised sparingly. But we cannot lose sight of the fact in the instant case that the prosecution of the identical cause of action, when sought to be prosecuted by Lena C. Meek, the widow and sole beneficiary, in the state of Missouri, was enjoined in this state upon grounds of equity. If it was inequitable for Lena C. Meek, either individually or as such administratrix, to prosecute the said cause of action in Missouri, then upon what process of reasoning could it be maintained that it would not be inequitable for the said Hamilton to prosecute it in Missouri? It is true that the court entering the injunction against Meek had jurisdiction over her and that the trial court in the instant case has no jurisdiction over Hamilton. But it is not sought to make any order against Hamilton in the instant case. It is sought only to make an order against persons who are under the jurisdiction of the courts of our state, from assisting her in prosecuting her cause of action in Missouri. *Her action is manifestly an attempt to circumvent and annul the decision of a court of competent jurisdiction in our state.* As heretofore pointed out, that judgment is amply and fully supported by the decisions of our courts of final jurisdiction. The persons sought to be

> enjoined in the instant case are within the jurisdiction of our courts, and the attempt is clearly being made to use them to circumvent and annul and render impotent the judgments and law of this state. They should be enjoined from so doing. Every court of general jurisdiction has the inherent power to protect its valid orders and judgments from being so annulled (Italics ours).

The Court relied on its own prior cited decisions and on *Michigan, etc., R. R. Co.* v. *Mix*, 278 U. S. 492, 49 Sup. Ct. 207, 73 L. Ed. 470, and *Denver, etc., R. Co.* v. *Ben Terte*, 284 U. S. 284, 52 Sup. Ct. 152, 76 L. Ed. 295.

It seems to us that the *Perduie* case is in harmony with *Wonderly* v. *Lafayette County, supra*, and its principle is applicable here since the attempt is clearly being made to use the state court in the instant case "to circumvent and annul and render impotent the judgments and law" of the Federal District Court. On the same point see also *Sandage* v. *Studebaker Bros. Mfg. Co.*, 41 N. E. 380 (Indiana, 1895).

In *Kansas City Rys. Co.* v. *McCardle*, 288 Mo. 354, 232 S. W. 464 (1921), the railroad had been harassed by the defendant McCardle, a lawyer who had made a practice of bringing suits in the State of Kansas on behalf of certain installment credit companies against the railroad's employees who lived in Missouri and running garnishments against the railroad requiring the impounding of the employees' wages, although both the creditor and the railroad were citizens of Missouri. The object of the suits was alleged to be to evade the Missouri Statute which provided, in effect, that only 10% of the wages of a married man or the head of a family could be garnisheed in Missouri. The railroad brought an injunction suit against McCardle in the case of one Campbell, an employee whose wages had been garnisheed in Kansas, but also attempted to enjoin the defendant generally from bringing any such suits involving any of its employees. A demurrer

to this petition was sustained below and on appeal was affirmed by the Missouri Supreme Court on the ground that the railroad was not entitled to have an injunction generally against the bringing of subsequent suits on behalf of other employees; but the court also held that it would have been entitled to an injunction had it confined its action to the particular pending case involving the employee Campbell.

Quite a number of the state court cases rely on *Cole* v. *Cunningham*, 133 U. S. 107 (1889). There proceedings in insolvency were begun in a Massachusetts court against a man named Bird, under the local statute. Prior thereto a Massachusetts creditor of Bird, knowing that he had stopped payment and was insolvent and that he had money due him from a New York firm, assigned its claim to a citizen of New York (without consideration) and the latter brought suit in New York against Bird by attaching the New York debt. The Massachusetts Court enjoined the Massachusetts creditor from proceeding with the New York suit through the New York assignee. The injunction was attacked on the ground that it violated the full faith and credit clause of the Constitution. This court affirmed the Massachusetts decree and after reviewing the authorities at great length held that the injunction did not violate the full faith and credit clause of the Constitution. The court further found that the right of the equity courts of one state to prevent persons within their jurisdiction from the prosecution of suits in other states had been long established both here and under the principles of the English law.

Steelman v. *All Continent Corp.*, 301 U. S. 278 (1936), appears to us to be an application of essentially the same principle applied in *Wonderly* v. *Lafayette County, supra, New York, C. & St. L. R. Co.* v. *Perduie, supra,* and *Cole* v. *Cunningham, supra,* on which the Court in the *Steel-*

man case relies. While the action involved two Federal courts, the principle applied makes it pertinent here. There Steelman was trustee in bankruptcy in the District Court for the District of New Jersey of the property of William Fox who had been adjudged a bankrupt. Fox had set up a family corporation called "All Continent Corporation" which the trustee claimed he had used to divert property which was properly part of the bankrupt estate. All Continent Corporation had an account and securities in excess of one half million dollars with Sparks & Co. a brokerage house in Philadelphia. All Continent brought suit against Sparks in the District Court of the Eastern District of Pennsylvania to establish its title to the account as against the claim that the account was really the property of Fox. The trustee in bankruptcy was made a party. Thereupon the trustee secured from the District Court in New Jersey an order staying the prosecution of the Pennsylvania suit. On appeal the 3rd Circuit held (86 F. 2d 913) that "the Pennsylvania court, having first acquired jurisdiction of the property and controversy, is entitled to exclusive jurisdiction, and the institution of the suit in chancery was an attempt to oust the Pennsylvania court of the jurisdiction which it had previously and validly acquired," adding that the Pennsylvania court could restrain the trustee from litigating the issue elsewhere. This court reversed the 3rd Circuit and affirmed the decree of the district court, ruling, in effect, that the Bankruptcy Court under all the circumstances was better able to administer full justice. It relied on Sec. 262 of the Judicial Code (28 U. S. C., Sec. 377), giving the United States courts power to issue all writs not provided for by statute necessary for the exercise of their jurisdictions and agreeable to principles of law. Respondent's argument was that in the Pennsylvania suit the court had custody of the *res*, namely, the securities held by Sparks & Co. in Philadelphia and that its possession of that *res* should not be interfered

with. Answering this argument Mr. Justice Cardozo said, l. c. 290:

> The argument misconceives the grounds upon which the trustee looks to us for aid. The trustee does not challenge the jurisdiction of the federal court in Pennsylvania, if the word jurisdiction be taken in its strict and proper sense. Cf. *Straton* v. *New*, 283 U. S. 318, 321; *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734, 737, 738. He is not seeking a writ of prohibition directed to the court itself. He is not seeking an injunction to vindicate his exclusive control over a *res* in his possession, or in the possession, actual or constructive, of the court that appointed him. *Isaacs* v. *Hobbs Tie & Timber Co., supra; Murphy* v. *John Hofman Co.*, 211 U. S. 562, 568, 569; *Moran* v. *Sturges*, 154 U. S. 256, 274. What he seeks is an injunction directed to a suitor, and not to any court, upon the ground that the suitor is misusing a jurisdiction which by hypothesis exists, and converting it by such misuse into an instrument of wrong. *Gage* v. *Riverside Trust Co.*, 86 Fed. 983, 998, 999; *Higgins* v. *California Prune & Apricot Growers*, 282 Fed. 550, 557; *Cole* v. *Cunningham*, 133 U. S. 107, 112, 117, 118. Suits as well as transfers may be the protective coverings of fraud. *Shapiro* v. *Wilgus*, 287 U. S. 348, 355. We are unable to yield assent to the statement of the court below that "the restraint of a proper party is legally tantamount to the restraint of the court itself." The reality of the distinction has illustration in a host of cases. 2 Story, Eq. Jur., 14th Ed., Sec. 1195; 5 Pomeroy, Eq. Jur., Sec. 2091; *Cole* v. *Cunningham, supra; Madisonville Traction Co.* v. *Mining Co.*, 196 U. S. 239, 245; *Kessler* v. *Eldred*, 206 U. S. 285; *Rickey Land & Cattle Co.* v. *Miller & Lux*, 218 U. S. 258; *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U. S. 399, 426; *Smith* v. *Apple*, 264 U. S. 274, 279. Cf. Judicial Code, Sec. 265; 28 U. S. C., Sec. 379; *Brown* v. *Pacific Mutual Life Ins. Co.*, 62 F. 2d 711, 713; *Chicago Title & Trust Co.* v. *Fox Theatres Corp.*, 69 F. 2d 60, 61, 62.

Applying *Steelman* v. *All Continent Corp.* here, the ground of the injunction in the present case is not

only that petitioner through his assignee is seeking to relitigate issues already decided by a court of equity but that respondent is misusing the jurisdiction of the Missouri court "and converting it by such misuse into an instrument of wrong." It cannot be said that this is an attempt to control the Missouri court and thus will lead to a conflict of courts since Justice Cardozo particularly points out that the restraint of the party is not legally tantamount to a restraint upon the court.

This Court said the same thing in *Marshall* v. *Holmes*, 141 U. S. 589 (1891), l. c. 599:

> While it (the federal court) cannot require the state court itself to set aside or vacate the judgments in question, it may, as between the parties before it, if the facts justify such relief, adjudge that Mayer shall not enjoy the inequitable advantage obtained by his judgments. A decree to that effect would *operate directly upon him*, and would not contravene that provision of the statute prohibiting a court of the United States from granting a writ of injunction to stay proceedings in a state court. It would simply take from him the benefit of judgments obtained by fraud.

The *Steelman* case affords an interesting contrast to *Princess Lida* v. *Thompson*, *supra*, 305 U. S. 465. In the latter this court, in resolving the jurisdictional issue in favor of the state court, laid some stress upon the fact that the action was *quasi in rem*. In the former the *res* was within the jurisdiction, and by reason of the action was within the custody of the District Court of the Eastern District of Pennsylvania but all of the equities of the situation preponderated in this Court's opinion in favor of the prior jurisdiction of the Federal Bankruptcy Court in New Jersey, even though Sparks & Co. was not a party to that proceeding. The case shows that there is no special magic in a *res* or in the custody of a *res*. It is only where that custody gives the court a peculiar right of priority that the existence of a *res* has weight. It is

merely *one* of the elements the court takes into account in adjudging equitable rights, and may be outweighed by other considerations.

Toledo Scale Co. v. *Computing Scale Co.*, 261 U. S. 399 (1923), affords an interesting comparison with the *Steelman* case, *supra*, and *Princess Lida* v. *Thompson*, *supra*. In the *Toledo Scale Co.* case one Federal court enjoined the prosecution of a subsequent suit in another Federal Court which represented an attempt to re-litigate issues decided in equity by the first Court. No *res* was involved in either court and upon the authority of Section 262 of the Judicial Code this court held that the Federal court in which the decree was obtained properly enjoined the Toledo Company from interfering with the execution of its decree by prosecuting the subsequent suit.

American courts have universally recognized the desirability of terminating litigation when the issues have been finally adjudged and have many times expressed this principle of public policy. Chief Justice Taft, speaking for this court, said in the *Toledo Scale Co.* case, *supra*, l. c. 425:

> As Mr. Justice Story remarked in *Ocean Insurance Co.* v. *Fields*, 2 Story 59, 18 Fed. Cas. 532, "It is for the public interest and policy to make an end to litigation, or, as was pointedly said by a great jurist, that suits may not be immortal, while men are mortal."

Two other expressions by this court are pertinent upon the same principle. Mr. Justice Roberts said in *Baldwin* v. *Iowa State Travelling Men's Association*, 283 U. S. 522 (1931), l. c. 525:

> Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled

> as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause.

Mr. Justice Reed tersely stated the same thing in *Treinies* v. *Sunshine Mining Co. et al.*, 308 U. S. 66 (1939), saying, l. c. 78:

> One trial of an issue is enough.

A member of this court inquired at the original argument why respondent's remedy was not adequate by pleading the decree of the district court in bar of the state court suit, and suggested that if the Supreme Court of Missouri refused to honor the plea this court would exercise its power of review by certiorari. Since the identity of issues between the pending state court suit and that concluded by the decree below has never been denied, the public interest in terminating this litigation requires that the matter be now concluded by affirming the relief granted respondent below. Is it just or proper that in order ultimately to prevent this attempt to relitigate the same issues decided by the Federal court, respondent should be put to its defense in the State court, subjected to a probable appeal, and then have to rely in the final outcome upon the *discretionary* power of this Court either to grant or refuse a petition for certiorari to obtain a ruling on what is not disputed, namely, that the issues in the two courts are, in fact, identical? We submit that it is not.

THE ENGLISH CASES ARE IN ACCORD WITH THE AMERICAN RULE.

The English chancery courts have often recognized and applied the principle that they have and should exercise the power to enjoin English citizens from prosecuting suits in other jurisdictions, the effect of which

was to relitigate issues previously determined by the English courts. Thus, in *Wedderburn* v. *Wedderburn*, 2 Beavan 208 (1840), a suit was instituted in England by persons beneficially entitled to the estate of David Webster against his surviving partner and persons who had succeeded them in the business. It sought participation in the profits which had been made in the partnership business from the death of Webster in 1801 to 1840. The case was heard by the Master of the Rolls and a decree entered for the plaintiffs which was afterward affirmed by the Lord Chancellor. While the parties were taking the necessary accounts under the Master's decree, plaintiffs commenced proceedings in the Court of Session in Scotland against several of the defendants who had heritable property there, the object of which was to obtain the Scotch process of inhibition and arrestment by which, in the very early stage of the suit, the pursuer acquires a lien on all the heritable property of the defendant for whatever he may eventually recover. The process, being recorded, operated as notice to all future purchasers and mortgagees so that in effect the defendant from the beginning of the suit was restrained from dealing with his property. The proceedings were in respect of the same demands as were the subject of the suit in England. The defendants moved that plaintiffs be restrained by injunction from prosecuting the Scotland suit or any other suit. The Master of the Rolls granted the injunction, saying that the court had jurisdiction to interfere in a case of this nature and that it was a proper case. He said, l. c. 214: "the rule of the Court is, that there is not to be a double investigation of the same matter upon which the Court is to adjudicate." He, however, pointed out that there might be special circumstances under which a party might be at liberty to proceed in a foreign country, such as where the defendants have no available property in England, or are insolvent, or some other special reason why a plaintiff ought to be permitted an auxiliary remedy; but he pointed out, even in such a case, the

party ought first to apply to an English court for permission to adopt such proceedings. On appeal of the case, the Lord Chancellor affirmed the principle laid down by the Master, but on application by the plaintiffs, gave them leave to proceed in Scotland so far only as might be necessary to obtain security for what might be found due in the English suit. He said (4 Myl. & C. 584, l. c. 595):

> * * * I am of opinion that the order of the Master of the Rolls is quite right. There can be no doubt that the general rule precludes parties from proceeding in any other court for the same purpose for which they are proceeding in this court, whether the other proceedings are taken in this or in any other country; and if the party conceives there are any circumstances in his case which constitute an exception to the rule, I think that his proper course is, not to take proceedings in another court, of his own authority but to apply to this court for permission to take such proceedings.

In *Beckford* v. *Kemble*, 1 Sim. & St. 7, the English court was moved on behalf of Beckford for an injunction to restrain the defendants from all proceedings in a suit instituted by them in the Chancery court in Jamaica against plaintiff and from all other proceedings in said country against plaintiff for the foreclosure and sale of the plantations in question. The foreclosure suit had been begun in Jamaica after a decree in an English court had been rendered upon the plaintiff's bill for an accounting, an ascertainment of the amount of the mortgage debts, and redemption. The Vice-Chancellor granted the injunction, saying, l. c. 17:

> All the parties are in England; and it is plain therefore that the accounts can much more conveniently, as well as more satisfactorily, be taken here than in Jamaica. It appears to me that the plaintiff in this court has a clear equity to be protected against a double account of the amount due on the mortgages.

In *Oakley* v. *Ramsey*, 27 L. T. 745, A sued in England for specific performance of a contract for the lease to him of a Scotch moor which the owner, in violation of the contract, had leased to a third party. The owner of the moor then began an action in Scotland for the rescission of the lease. The English court enjoined the owner from proceeding with the Scotch action.

Tredigar v. *Windus*, 44 L. J. Ch. 268; L. R. 19 Equity 607; 32 L. T. 596; 23 W. R. 511, holds that the right to plead a prior equity decree in defense of an action at law does not prevent the court of equity from granting an injunction against the prosecution of the law action. There both actions were in the English courts.

Carron Iron Co. v. *MacLaren*, 5 H. L. Cas. 416, 24 L. J. Ch. 620, 3 W. R. 597, holds that if the circumstances of a case are such as would make it the duty of a court of equity in England to restrain a party from instituting proceedings in another English court the same circumstances will also warrant it in imposing a similar restraint upon him with regard to proceedings in a foreign court.

It therefore appears that the English courts apply substantially the same principles in substantially the same manner and reach the same result as our own state and federal courts in determining when a court of equity will enjoin the prosecution of proceedings in another court or jurisdiction.

DIAL V. REYNOLDS, 96 U. S. 340, DISTINGUISHED.

In the first argument of this case one of the Justices inquired why *Dial* v. *Reynolds* is not exactly in point. It was not possible to answer the question because we did not remember the case.

There Dial, as successor trustee, filed a bill to foreclose a deed of trust executed by one Cooper to secure certain liabilities to Staatsman. Reynolds claimed title

to the real estate adversely to Cooper. Dial's bill, besides foreclosure, asked to quiet the title of the trustee as against Reynolds and to remove the cloud of Reynold's claim and to enjoin him from further prosecuting an action in ejectment he had previously brought. This court held that the trial court correctly dismissed the bill for misjoinder since the plaintiff was attempting to dispose of two separate causes of action against two different parties in the same suit. The court indicated that the statute in question here forbade the injunction asked, saying, l. c. 341:

> Such an injunction, except under the Bankrupt Act, no court of the United States can grant. With this exception, it is expressly forbidden by law.

By the court's "such an injunction" it is fairly to be inferred that the court meant an injunction against one who was not a party to the deed of trust and claimed adversely to the mortgagor, the mortgagee and the trustee. The statement should be read in the light of the facts before the court, and the circumstance that no attempt was being made to relitigate issues previously adjudged. If that is not what the court meant, then the statement is in conflict with the subsequent rulings on the subject.

This court has cited *Dial* v. *Reynolds* only four times, as follows: *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175 (1920), l. c. 182 (see Respondent's Brief, page 37). There the court said, after quoting Section 265 of the Judicial Code:

> Is the suit one to stay proceedings in a state court in the sense of that provision? If it is, the District Court erred in not dismissing the bill on that ground. *Haines* v. *Carpenter*, 91 U. S. 254; *Dial* v. *Reynolds*, 96 U. S. 340; *United States* v. *Parkhurst-Davis Co.*, 176 U. S. 317. If it is not, the court rightly entertained the suit and proceeded to an adjudication of the merits, for the citizenship of the parties and the amounts in controversy were within the jurisdictional requirements.

The court, in the *Wells Fargo* case, then held that the suit was not within the prohibition of the statute and that the injunction against prosecuting the state court proceeding was properly granted.

Providence & N. Y. S. S. Co. v. *Hill Mfg. Co.*, 109 U. S. 607 (1883), was a limitation of liability proceeding in admiralty and this court held that that proceeding superseded any state court action. *Dial* v. *Reynolds* was cited in the dissenting opinion.

In *Hunt* v. *New York Cotton Exchange*, 205 U. S. 322 (1906), l. c. 338, where an injunction was granted against the prosecution of a state court action, the court merely said that *Dial* v. *Reynolds* and other cases cited did not sustain the appellant's contention without stating why.

In *Hull* v. *Burr*, 234 U. S. 712, l. c. 723, this court, after citing *Dial* v. *Reynolds* and other cases for the statement that the prohibition of the statute against injunctions to state court proceedings has been customarily observed, proceeds as follows:

> It is recognized, however, that Section 720 was not intended to limit the power of the Federal courts to enforce their authority in cases that on other grounds are within their proper jurisdiction; and hence, it has been held that, in aid of its jurisdiction properly acquired, and in order to render its judgment and decrees effectual, a Federal court may restrain proceedings in a state court which would have the effect of defeating or impairing such jurisdiction. *French, Trustee,* v. *Hay*, 22 Wall. 250; *Dietzsch* v. *Huidekoper*, 103 U. S. 494, 497; *Julian* v. *Central Trust Co.*, 193 U. S. 93, 112; *Traction Co.* v. *Mining Co.*, 196 U. S. 239, 245.

It seems clear, therefore, that in the subsequent cases this court has in no sense repudiated *Dial* v. *Reynolds* but has merely held that its ruling does not apply to cases like the present one. This is apparent. No attempt was being made there to relitigate issues already decided by a Federal equity court.

CONCLUSION.

By the time the Court reaches this "Conclusion" it will have read both Respondent's Brief and Respondent's Supplemental Brief and will, therefore, have reviewed many of the principal cases in the United States declaring and applying the principle of law before the Court for review. It will, therefore, be apparent that the Court is not here dealing with a peculiar abuse of federal power contrary to the statute, or with an attempt by the national courts to supervise or control the state courts, or with a principle in any sense peculiar to or even originated by the national courts. On the contrary it has before it for review the invocation by the District Court of a principle of universal application both here and in England. Given the situation presented by the facts in this case a Federal court will enjoin the parties from proceeding in a state court; it will enjoin the parties from proceeding in another Federal court; and a state court will enjoin the parties from proceeding in the Federal courts or from proceeding in another state court or from proceeding in another court of the same state. Likewise an English court will enjoin the parties from proceeding in another English court or a court of a foreign country.

When, therefore, the question examined is not merely "what have the federal equity courts done?" but "what have *all* Anglo-Saxon courts done when faced with an attempt to litigate elsewhere issues already adjudged in equity?", it becomes apparent that this court has really construed Section 265 of the Judicial Code so as not to exclude a remedy which every co-ordinate court possesses and exerts, a remedy which the national courts also possess by the express provisions of Section 262. To construe Section 265 otherwise would be to construe it to deprive the national courts of a fundamental equitable power of which it is unreasonable to suppose that Congress intended to deprive them. It is equally clear that the exercise of this power does not foster conflicts be-

tween the courts but that, on the contrary, it is essential to prevent conflicts. It is invoked only in the interests of justice; and justice is what the courts, state or national, are intended to dispense.

It is also clear that the exercise of the power has not been limited in any courts to actions *in rem* but that on the contrary, the existence of a *res* is merely one equitable circumstance influencing judicial action. If the justice of the situation requires, one court not having the custody of a *res* will enjoin the parties from proceeding in another which does have its custody (*Steelman* v. *All-Continent Corp., supra*).

In closing we respectfully request the court to bear this further observation in mind. At the time when this statute (Section 265) was first enacted (1793), as is well known, the states were acutely apprehensive that the Federal power, including the power of the federal courts, might be exerted in a manner detrimental to and derogatory of the co-existing powers of the states and of the state courts. It is fairly inferable that many states feared that the federal courts might attempt improperly to interfere with the lawful and orderly processes of the state courts and prevent them from exercising their proper jurisdiction. At the same time we do not see how it can be properly assumed that Congress intended to prevent the federal courts from exercising those characteristic powers which *all* courts of a similar character then possessed by reason of their inherent nature. One of those powers which had long existed in English courts of equity, as we showed in Respondent's Brief, was the power to protect and effectuate the courts' own decrees. We do not believe that there is any just ground for saying that it was the intent of Congress to strip the federal courts of this essential, inherent power merely in the one aspect of its exercise in which the federal courts might come in contact with litigants in the state courts. The exercise of power in this instance in no way inter-

feres with the state courts' concurrent and coordinate jurisdiction. It is not the exercise of a power which the state court itself will not readily exercise in limiting litigants who seek to relitigate in the federal courts issues already determined in other courts, federal, state or foreign. We trust that the court will differentiate between the case at bar and other cases now before it in which the power of injunction to stay proceedings in state courts has been exercised in other circumstances where, it may be, the right to do so is neither so well defined as in the present case, nor so manifestly in the interests of justice and equity.

We are convinced that this Court will not proceed upon a tangent which would throw it out of harmony with all the other courts of the Anglo-Saxon world. The decree below should be affirmed.

Respectfully submitted,

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